National Energy Board

Reasons for Decision

Hydro-Québec

MH-4-85

July 1985

For the Approval of the Plan, Profile and Book of Reference

National Energy Board

Reasons for Decision

In the Matter of

Hydro-Québec

For the Approval of the Plan, Profile and Book of References

MH-4-85

June 1985

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Abbreviations

Names

Act	*National Energy Board Act*
Board	National Energy Board
NEB	National Energy Board
Applicant	Hydro-Québec

Units of Measurements

km	kilometre	(1 000 metres)
kV	kilovolt	(1 000 volts)
m	metre	

Technical Terms

PPBoR	Plan, Profile and Book of Reference
mod.	modified

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* and the Regulations made thereunder; and

IN THE MATTER OF Certificate of Public Convenience and Necessity No. EC-III-22 issued to Hydro-Québec, pursuant to Section 44 of the Act; and

IN THE MATTER OF a hearing pursuant to subsection 29.2 (1) of the *National Energy Board Act*, filed with the Board under File No. 1977-4-4/Q2-11.

HEARD in Saint-Jean-sur-Richelieu, Québec, on 18 and 19 June 1985.

BEFORE:

J.L. Trudel	Member
A.D. Hunt	Member
J. Farmer	Member

APPEARANCES

Applicant and Intervenors	Represented by
Hydro-Québec	G. Marchand P.R. Fortin
O. Bullock D. Paradis	S. Genik G. Mercure
National Energy Board	D. Tremblay

Chapter 1
Background - The Certificate

On 8 March 1985, the National Energy Board ("the Board", "NEB") issued certificate of Public Convenience and Necessity No. EC-III-22 to Hydro-Québec ("the Applicant"), authorizing the construction and operation of an international power line. The certificate includes certain conditions requiring the Applicant to implement the policies, practices, recommendations and procedures set out in the application of 30 March 1984, and to submit to the Board a handbook describing the mitigative procedures to minimize environmental impacts associated with the construction of the international power line. On 21 May 1985, the Applicant submitted its handbook to the Board. By letter dated 11 June 1 985, the Board indicated that the handbook satisfactorily responded to requirements of Condition 6 of Certificate No. EC-III-22.

The project consists of the construction and operation of a 120 kilovolt ("kV") international power line extending 17.7 kilometres ("km") from the Bedford substation to a point located 450 metres ("m") east of marker 620 A on the international boundary, in the Municipality of Saint-Armand-Ouest in the Province of Québec (see Appendix I). The power line requires a right-of-way width of 40m, with supporting wood pole structures having an average height of 17.7m. The average span length will be approximately 160m.

Hydro-Québec has already obtained two licences for the export of interruptible and short-term firm power and energy to the Vermont Department of Public Service by means of the 120 kV line. The licences for those exports were issued by the Board for terms of up to ten years, starting in September 1985.

Chapter 2
The Application - The Detailed Route

On 12 March 1985, pursuant to the provisions of section 29 of the *National Energy Board Act* ("the Act"), the Applicant filed its plan, profile and book of reference (PPBoR) for the 120kv power line, thereby requesting Board approval of the proposed detailed route.

In addition to the filing of PPBoR, the Applicant submitted to the Board two requests for the approval of sections of the PPBoR. The first request, dated 22 May 1985, concerned the approval of feuillets 2/5 and 5/5. The second request, dated 13 June 1985, was made with respect to feuillets 3/5 (modified) and 4/5 (mod.). Having reached agreements with all the landowners along the route, with the exception of Mrs. Bullock and Mr. Paradis, Hydro-Québec submitted feuillets 3/5 (mod.) and 4/5 (mod.), as well as a new feuillet 3A/5. The modified feuillets contained the same information as the original feuillets 3/5 and 4/5 submitted on 12 March 1985, except for the portion of the line crossing lots 377 and 378 belonging to Mrs. Bullock, part of lot 378 belonging to Marc Landry, and lots 376, 371 and 372 belonging to Mr. Paradis. That portion was transferred from the original feuillets 3/5 and 4/5 to form the new feuillet 3A/5. During the hearing on 19 June 1985, Hydro-Québec requested verbally that feuillet 3A/5 be approved by the Board.

Chapter 3
Notification Procedure

In association with the filing of the plan, profile and book of reference, and as further required by the provisions of the Act, the Applicant, by letter dated 11 March 1985, requested the Board's approval to use the same format for the notices for service and publication as had been previously approved by the Board for the Hydro-Québec, Des Cantons/Nouvelle-Angleterre power line. By letter dated 20 March 1985, the Board approved this request.

With the approval of the notices, and pursuant to the provisions of subsection 29.1 (1) of the Act, the Applicant proceeded to serve notice informing local landowners along the proposed detailed route of the project and of their right to file objections pertaining to the route. By letter dated 29 March 1985, the Applicant informed the Board that the last day for publication of notice had been 26 March 1985 and the last day for service of notice had been 29 March 1985.

3.1 Personal Service

The Board is satisfied that notice was served on all landowners across whose properties Hydro-Québec proposes to acquire a servitude so far as they could be ascertained.

Under the provisions of subsection 29.1 (2) of the Act, an owner of lands served with such notice could, within thirty days of being served, file a written objection with the Board. That objection would set out the nature of the interest in the proposed detailed route, and the grounds for the landowner's opposition.

3.2 Public Notice

The Board is also satisfied that notices were published in two local newspapers informing the public of the proposed detailed route of the power line.

Under the provisions of subsections 29.1 (3) of the Act, any person considering that their lands might be adversely affected by the proposed detailed route, could object in writing to the Board within thirty days of the last day of publication of notice. That objection would describe the nature of the party's interest in the lands and the grounds for opposing the detailed route.

Chapter 4
Interventions and Appearances

4.1 General Matters

During the statutory thirty-day waiting period following notification, the Board received a total of 11 submissions in relation to the proposed detailed route. Having received those objections, the Board issued Hearing Order No. MH-4-85 dated 13 May 1985, stating that it would hold a public hearing pursuant to the provisions of Section 29.2 of the Act. That order was amended by Hearing Order No. AO-1-MH-4-85, dated 15 May 1985.

4.2 Interventions

Intervenors	Feuillet
Daniel Racine	2/5
Viola Bockus Duclos	2/5
Gregory Vaughan	3/5 (mod.)
Irène Bernhein-Breuleux	3/5 (mod.)
Jean Pierre Lefebvre	3/5 (mod.)
Orabell Bullock	3A/5, 4/5 (mod.)
Denis Paradis	3A/5
Fernand Fontaine	4/5 (mod.)
Thérese N. Marche	5/5
Léopold Choquette	5/5
Union des Producteurs Agricoles des Frontières	-

4.3 Interventions Withdrawn

Prior to the hearing, nine intervenors notified the Board that they were withdrawing their objections. They were:

Daniel Racine
Viola Bockus Duclos
Gregory Vaughan
Irène Bernhein-Breuleux
Jean Pierre Lefebvre
Fernand Fontaine
Thérèse N. Marche
Leopold Choquette
Union des Producteurs
Agricoles des Frontières

Chapter 5
Preliminary Motions and Complaint

5.1 Preliminary motions

On 14 June 1985, Mrs. Orabell Bullock and Mr. Denis Paradis informed the Board by means of notices of motion of certain preliminary motions they intended to raise at the hearing. Mrs. Bullock and Mr. Paradis stated that Hydro-Québec had not obtained the necessary provincial authorizations for the project and also, that with the issuance of the certificate of public convenience and necessity, the Board had already come to a decision regarding the detailed route which was the subject of the hearing scheduled for 18 June 1985. Mrs. Bullock and Mr. Paradis requested that the Board:

1. suspend the hearing until Hydro-Québec had obtained all legally required authorizations; and

2. suspend proceedings until a decision had been made on the preliminary motions concerning the Board's jurisdiction to hear Hydro-Québec's application for approval of a detailed route.

The Board heard the preliminary motions on 18 June 1985, at the beginning of the detailed route hearing.

In their statements regarding the certificate, the counsel for Mrs. Bullock and Mr. Paradis argued that the Board's decision to accept a general route could lead to a reasonable apprehension of bias on the part of the Board, and as a result, the Board had lost its jurisdiction.

Hydro-Québec's counsel stated that the NEB Act requires a two-stage hearing process before the construction of an international power line and it is the existence of this process which could lead to an appearance of bias.

Regarding the provincial authorizations which Hydro-Québec must obtain before construction, Mrs. Bullock and Mr. Paradis stated that Hydro-Québec should have obtained an authorization pursuant to the "Loi sur le crédit forestier" and also, that the authorization obtained from the Commission de protection du territoire agricole du Québec was not valid.

Hydro-Québec replied that all necessary authorizations had been acquired and that they are valid until such time as they are annulled by a court having jurisdiction.

5.2 Complaint Pursuant to Section 40 of the Act

On 14 June 1985, Mrs. Orabell Bullock and Mr. Denis Paradis submitted to the Board a complaint pursuant to section 40 of the Act. In their complaint they maintained that Hydro-Québec had illegally begun construction, that is, before the plan, profile and book of reference had been approved.

This complaint was heard on 18 June 1985, immediately after the Board heard the preliminary motions.

Counsel for Mrs. Bullock and Mr. Paradis maintained that Hydro-Québec had begun construction by clearing the complete width of the right-of-way (about 40m) along the entire route, except for the properties of their clients, and also by clearing a strip 6-8 feet (about 2m) wide on their properties.

Hydro-Québec argued that where clearing had taken place, they had agreements with the landowners, and that clearing was not part of power line construction as such. In the case of Mrs. Bullock and Mr. Paradis, Hydro-Québec indicated that the work which had been carried out on their properties was not clearing, but surveying, which is permitted by the Act.

5.3 Decisions Respecting the Preliminary Motions and the Complaint

On 19 June 1985, the Board rendered its decision concerning the preliminary motions and the complaint pursuant to Section 40. The decisions are reproduced in Appendix II and III respectively of this report.

Following these decisions, the counsel for Mrs. Bullock and Mr. Paradis informed the Board that their clients intended to go before the Federal Court and further indicated that their mandates were limited to requesting a suspension of the hearing until such time as the Federal Court had made a ruling.

Following these representations, the Board decided not to suspend the hearing to avoid unnecessary delays. (This decision is reproduced in Appendix IV). At this point in the hearing, the Board gave the counsel the opportunity to consult with their respective clients. The counsel, without consulting with their clients, reaffirmed that their mandates were clear and left the hearing room.

Chapter 6
Evidence

6.1 General Evidence of the Applicant

As part of its evidence, the Applicant submitted a document entitled "Rapport sur les études d'avant-projet", providing a description of its route selection and environmental assessment methodologies.

In addition, during the hearing, Hydro-Québec submitted three maps depicting the results of inventories describing the human, natural and visual environments. Hydro-Québec indicated that the proposed detailed route had been established after identifying the various areas of environmental constraint.

In establishing the proposed detailed route, Hydro-Québec indicated that the protection of agricultural lands was of primary importance. The Applicant attempted to avoid visual impacts and to minimize effects on forested areas.

6.2 Intervenors' Evidence

Two separate interventions were considered in relation to the detailed route. Written interventions were submitted by Mrs. Orabell Bullock and Mr. Denis Paradis and primarily concerned the location of the power line right-of-way, as well as the possible effects of the line on farming and forestry activities. The intervenors did not present any further evidence on the detailed route during the course of the hearing.

In her written intervention, Mrs. Bullock indicated that the proposed route did not take into account the dairying activities on her farm, that the proposed route passed diagonally across her property, and that the line would have adverse impacts on the habitat of the local whitetailed deer population.

Mr. Paradis' written intervention referred to the potential damage which the line would cause to his property, particularly to the activities associated with his forestry management plan. Mr. Paradis' written intervention also stated that the proposed route would divide his property and in addition, would adversely affect the natural habitat of the whitetailed deer.

6.3 Applicant's Position

Although no evidence was presented by the intervenors during the hearing, Hydro-Québec responded to the specific concerns raised in their written interventions.

In response to Mrs. Bullock's objection concerning the operation of her dairy farm on lots 377 and 378, the Applicant indicated that the line had been designed in such a way as to minimize electrical field effects at ground level and to meet required standards. For this reason, the Applicant did not anticipate adverse impacts to the dairy herd.

For the crossing of chemin Guthrie, Hydro-Québec considered the aesthetic aspect of Mrs. Bullock's property as a principal constraint. Considering the orientation of her house and the importance of the visual field to the east, the Applicant selected a route alignment to the west of the house in order to minimize the visual impacts on the property. The proposed line would pass 200m from Mrs. Bullock's house and 250m from Mr. Lefebvre's property located to the west of the proposed right-of-way on chemin Guthrie.

For those same lots, Hydro-Québec also chose a route alignment through a forested area of low ecological value in order to screen the towers and reduce their visual impact.

Concerning lots 365 and 366 belonging to Mrs. Bullock, the route was located at the end of the lots and along the boundary line between the municipalities of Saint-Armand-Ouest and Frelighsburg. The Applicant indicated that the selected route resulted in minimal environmental impact.

In response to Mr. Paradis' objection concerning his forestry management plan, the Applicant stated that for this project, the width of the right-of-way had already been reduced along the entire route in order to minimize clearing and the resultant impacts on forestry activities. To that end, the Applicant indicated that the proposed diagonal alignment across Mr. Paradis' property would reduce the length of right-of-way required, thereby minimizing the impacts on the property. The Applicant also stated that landowners could submit their plans for growing certain trees on the power line right-of-way, within specified height limits.

With respect to the division of Mr. Paradis' property, the Applicant indicted that other routing alternatives had been examined for this area, but that the environmental and visual impacts associated with those alternatives were greater than those associated with the proposed route.

The Applicant indicated that certain impacts to the habitat of whitetailed deer could occur as a result of the power line. However, the Applicant presented the results of a study conducted in co-operation with the Ministère du Loisir, de la chasse et de la pêche du Québec, towards identifying important habitat area and avoiding adverse impacts. As a result of one study, the proposed detailed route avoids, as much as possible, the dense conifer woods which constitute wintering areas for the deer.

Chapter 7
Disposition

The Board is of the opinion that the proposed route alignment across the properties of Mrs. Bullock and Mr. Paradis as described on feuillets 3A/5 and 4/5 (mod.) is the best possible detailed route.

The Board agrees with Hydro-Québec that the potential impacts of the line on Mrs. Bullock's dairy farm are not significant. The electric field associated with the 120 kV line should not affect her cattle. In addition, the proposed route, which avoids cultivated lands as much as possible, reduces negative impacts on agricultural activities on her farm.

The Board is also satisfied that the impact of the power line on whitetailed deer would be minimized since the proposed route avoids important wintering areas, which are normally found in dense stands of conifers.

The Board considers that the visual impact of the line will be kept to a minimum since the proposed route generally passes through wood lots.

Although the proposed route passes through Mr. Paradis' woodlot, the impact on the forest management plan is reduced since the width of the right-of-way has been minimized and the proposed route crosses the property diagonally, thereby minimizing the amount of clearing required in his woodlot. The Board is of the opinion that lands subject to forest management plans do not present serious constraints for the passage of power lines. As a result, the Board considers that the proposed route on the properties of Mrs. Bullock and Mr. Paradis is acceptable.

In addition, the Board is satisfied that the Applicant has followed proper procedures in selecting the proposed detailed route for the rest of the 120 kV line between the Bedford substation and the State of Vermont. No objection or representation was made concerning feuillets 2/5, 3/5 (mod.) and 5/5. The Board has examined these plans and finds them to be satisfactory.

As a result, the Board approves the PPBoR, which includes feuillets 2/5, 3/5 (mod.), 3A/5, 4/5 (mod.) and 5/5.

The proceeding chapters as well as Board Order No. IPL-Q2-8-85 contained in Appendix V, constitute our reasons for decision and our decision in this matter.

J.L. Trudel
Presiding Member

A.D. Hunt
Member

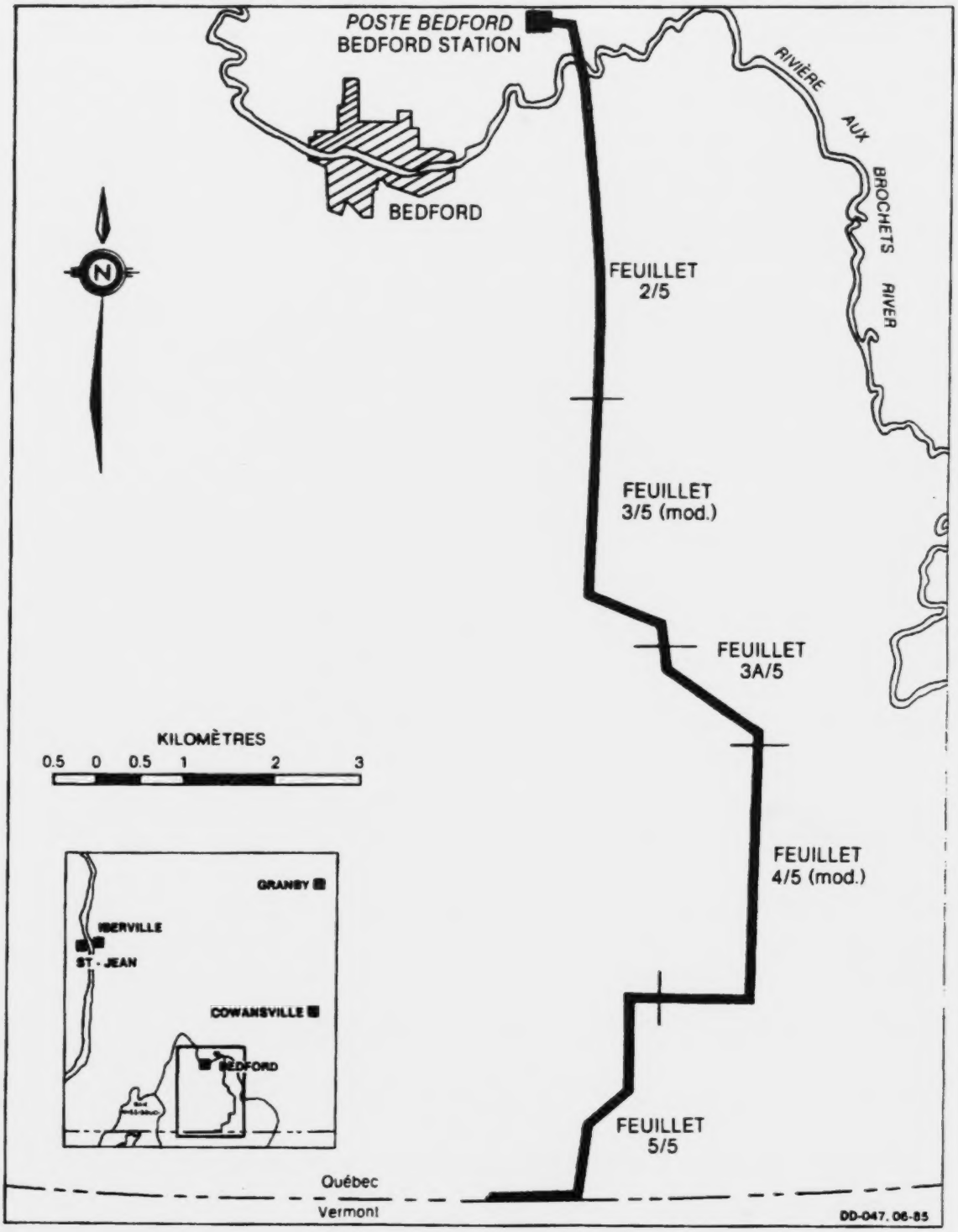
J. Farmer
Member

Appendix I

Figure a1-1
Proposed Detailed Route For
the 120 kV International
Power Line

ROUTE DETAILLÉE PROJETÉE DE LA LIGNE INTERNATIONALE DE TRANSPORT D'ÉLECTRICITÉ À 120 kV

PROPOSED DETAILED ROUTE FOR THE 120 kV INTERNATIONAL POWER LINE



Appendix II
Board's Decision on the Preliminary Motions Rendered During the Hearing

The Board has considered the requests contained in the preliminary motions of Mrs. Orabell Bullock and of Mr. Denis Paradis, and after hearing the representations made by the parties concerned, has decided the following:

1. With respect to the Board's jurisdiction to hear Hydro-Québec's detailed route application, the NEB Act provides for a two-stage hearing process for the construction of an international power line.

In the first stage, the Board must, pursuant to Section 44 of the Act and in order to issue a certificate respecting an international power line, determine if public convenience and necessity presently requires the line and will require it in the future. To do that, the Board must consider, among other things, the general location of the line. Section 28 of the NEB Act requires, therefore, that the company must submit a map showing the general location of the line.

There are no requirements in the Act regarding the methods used to select the general location of the line.

In its decision of January 1985, the Board was satisfied with the methods used by Hydro-Québec to select its proposed general route and accepted that general route.

The NEB Act also calls for a second stage to determine the detailed route. The detailed route is described on the plan, profile and book of reference submitted by the company.

Although the Board studies the detailed route within a framework established by the general route location approved at the certificate phase, that approval does not limit the jurisdiction of the Board to consider objections to the detailed route and to approve, or not approve, the plan, profile and book of reference.

Although the general location of the line may have been accepted, the Board may, pursuant to section 29.3 (1) of the Act, not approve part or all of the plan, profile and book of reference. The Board does not accept, therefore, the claim of Mrs. Bullock and Mr. Paradis that the Board's decision concerning the detailed route is made in advance.

2. With respect to the provincial authorizations that Mrs. Bullock and Mr. Paradis claim Hydro-Québec must obtain; although the Board considers it important that Hydro-Québec has acquired all provincial authorizations for construction and although the Board prefers that those authorizations be obtained, the Board is not bound by those authorizations.

The NEB Act does not require as a preliminary condition for the determination of a detailed route that those authorizations be obtained.

For these reasons, the Board rejects the motions of Mrs. Bullock and Mr. Paradis.

Appendix III
Board's Decision on the Complaint Pursuant to Section 40 Of the NEB Act rendered During the Hearing

The Board has considered the complaint of Mrs. Bullock and Mr. Paradis pursuant to Section 40 of the NEB Act, and after having heard the representations of the interested parties, has decided the following:

Firstly,

With respect to the route as a whole

Section 40 of the NEB Act requires that a person may not start constructing a section or part of an international power line until, among other things, the Board has approved the plan, profile and book of reference of that section or part of the proposed line.

The Board is of the opinion that clearing constitutes a start of construction.

After hearing the evidence of the interested parties, the Board considers that there has been a violation of Section 40 of the Act.

In addition, Section 48 of the NEB Act states that as a general condition to any certificate, all requirements of the Act must be respected. The Board is of the opinion that the company has not respected this general condition to the certificate.

Although the Board may revoke or suspend a certificate pursuant to Section 47, this is a discretionary power. The Board is of the opinion that in the present case, this would not be an appropriate sanction.

To minimize possible environmental effects, however, the Board, pursuant to Section 12 of the NEB Act, orders Hydro-Québec firstly, to cease all clearing of the right-of-way for the Bedford/Vermont line and secondly, orders Hydro-Québec to discontinue all construction activities on the line until such time as the Board has approved the plan, profile and book of reference, and the plans have been deposited at the appropriate offices of the registrar of deeds, in conformance with Section 40 of the Act.

In conclusion, the Board would like to mention that the actions taken by Hydro-Québec do not affect the decision-making powers of the Board to approve, or not to approve the plan, profile and book of reference.

Secondly,

With respect to the properties of Mr. Paradis and Mrs. Bullock

After having heard the testimonies of the various parties, the Board is satisfied that Hydro-Québec has not undertaken any right-of-way clearing on the properties of Mr. Paradis and Mrs. Bullock, but rather a survey of the proposed detailed route.

As a result, since Section 62 (1)(a) of the Act permits a company to carry out those surveys necessary to determine the location of the line, the Board is of the opinion that there has not been a violation of Section 40 of the Act.

For these reasons, the Board rejects the complaint concerning the properties of Mr. Paradis and Mrs. Bullock.

Appendix IV
Board's Decision on the Motion for Adjournment

The Board has heard the counsellors' representations concerning their respective mandates which they received during the intermission following the various decisions rendered this afternoon.

If the Board were to adjourn its proceedings each time a party stated its intention take its case to a superior court, that could become a tactic to create unjustifiable delays.

The Board does not perceive an obligation to adjourn the hearing in this case. The counsellors might wish to consult with their clients concerning their respective mandates in the context of this decision.

Appendix V
ORDER NO. IPL-Q2-8-85

THE MATTER OF the *National Energy Board Act* and the Regulations made thereunder; and

IN THE MATTER OF applications, pursuant to Section 29 of the *National Energy Board Act* (hereinafter referred to as "the Act"), made by Hydro-Québec (hereinafter called "the Applicant"), dated 12 March, 22 May, 13 and 19 June 1985, for Orders approving its plan, profile and book of reference respecting certain lands required for an international power line, to be known as the Bedford/Vermont line, in the Province of Quebec, filed with the Board under File No. 1977-2-4/Q2-11.

BEFORE the Board on 4 July 1985.

WHEREAS the Board has considered the said applications;

AND WHEREAS the Board has issued to the Applicant Certificate of Public Convenience and Necessity No. EC-III-22, dated 8 March 1985, in respect of an international power line together with all associated facilities;

AND WHEREAS the Applicant submitted to the Board on 12 March 1985, its Plan, Profile and Book of Reference consisting of

(i) FEUILLET 2/5,
(ii) FEUILLET 3/5,
(iii) FEUILLET 4/5, and
(iv) FEUILLET 5/5

all dated 10 November 1984, respecting the detailed route of the said international power line;

AND WHEREAS the Board is satisfied that on or prior to 29 March 1985, the Applicant served notice as required pursuant to subsection 29.1(1) of the Act;

AND WHEREAS the Board has not received any statements of opposition pursuant to subsection 29.1(3) of the Act respecting the detailed route of the international power line as shown on the submitted Plan, Profile and Book of Reference;

AND WHEREAS the Board has received statements of opposition pursuant to subsection 29.1(2) of the Act respecting the said detailed route of the international power line as shown on the said Plan, Profile and Book of Reference;

AND WHEREAS the said statements of opposition respecting the detailed route shown on FEUILLET 2/5, and FEUILLET 5/5 were subsequently withdrawn;

AND WHEREAS the Applicant, on 13 June 1985, submitted to the Board

(i) FEUILLET 3/5 (modified), dated 10 November 1984,
(ii) FEUILLET 3A/5, dated 22 May 1985, and

(iii) FEUILLET 4/5 (modified), dated 10 November 1984,

AND WHEREAS FEUILLET 3/5 (modified) and FEUILLET 4/5 (modified) were prepared to exclude those contested properties which are shown on FEUILLET 3A/5;

AND WHEREAS, pursuant to Order No. MH-4-85, dated 13 May 1985, as amended, the Board held a public hearing on 18 and 19 June 1985, in Saint- Jean-sur-Richelieu, Quebec, respecting the outstanding objections to the detailed route of the said international power line;

AND WHEREAS the Board in its Reasons for Decision, dated July 1985, concurred with the Applicant on the detailed route of the international power line as shown on the Plan, Profile and Book of Reference consisting of FEUILLET 2/5, FEUILLET 3/5 (modified), FEUILLET 3A/5, FEUILLET 4/5 (modified), and FEUILLET 5/5;

IT IS ORDERED THAT the Plan, Profile and Book of Reference consisting of

(i) FEUILLET 2/5 dated 10 November 1984,
(ii) FEUILLET 3/5 (modified) dated 10 November 1984,
(iii) FEUILLET 3A/5dated 22 May 1985,
(iv) FEUILLET 4/5 (modified) dated 10 November 1984, and
(v) FEUILLET 5/5 dated 10 November 1984,

showing the Applicant's international power line having a length of approximately 17.7 kilometres, extending from a point in part of Lot 2160, Range V, of the Cadastre of the Township of Stanbridge, Registration Division of Missisquoi, Province of Quebec, designated CH. 34.63 on said FEUILLET 2/5, to a point in part of Lot 218 of the Cadastre of the Parish of Saint-Armand-Ouest, Registration Division of Missisquoi, Province of Quebec, designated CH. 17 720.98 on said FEUILLET 5/5, being a point situated at a distance of 450 metres east of marker 620A on the International Boundary Line between the Province of Quebec, Canada, and the State of Vermont, United States of America, are approved.

National Energy Board

G. Yorke Slader
Secretary